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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Kelso Enterprises Limited and Pacific Fruit Limited,

Plaintiffs,

08 Civ. 8226 (SAS)

-against-

M/V DIADEMA, her engines, boilers, etc., M/V  
ROTTERDAM, her engines, boilers, etc., M/V  
MARYSTOWN, her engines, boilers, etc., *in rem*, A.P.  
Moller – Maersk A/S, Maersk Line, Maersk del  
Ecuador C.A., CW Schiffahrts GmbH & Co KG, JMS  
Schiffahrtsges mbH & Co KG ms 'Antares J', Seaspan  
Corp., *in personam*,

**PLAINTIFFS' INITIAL  
DISCLOSURE PURSUANT  
TO RULE 26(a)(1)**

Defendants.

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Plaintiffs Kelso Enterprises Limited and Pacific Fruit Limited, by their  
undersigned attorneys, state as follows for their Initial Disclosures pursuant to Rule 26(a)(1) of  
the Federal Rules of Civil Procedure:

**I.**

The following persons likely have discoverable information relating to the  
condition of the subject cargo at loading and/or discharge, and the quantum of damages to the  
cargo, including efforts to mitigate the losses:

1. Ricardo Chiriboga  
Quality Manager  
Pacific Fruit Limited  
Toranomom 1 – Chome Mori Bldg. 7<sup>th</sup> Floor  
1-19-5 Toranomom, Minato-KU  
Tokyo, Japan 105-0001
2. Malena Lopez  
Maersk Line  
Maersk del Ecuador C.A  
Av. Juan Tanca Marengo, Km 1.8  
Conauto Bldg. 3rd floor.  
Guayaquil - Ecuador  
Tel: +593 4 2682531
3. Quality Control Representative  
Exportadora Bananera Noboa S.A.  
101 El Oro y La Ria  
Guayaquil, Ecuador
4. Crones & Co., Ltd.  
273 Yamashita-Cho  
Naka-Ku, Yokohama  
231-0023 Japan
5. The Captain, Chief Officer, Reefer Engineer and/or other officers of the defendant vessels.

## II.

Plaintiffs may use the following documents or categories of documents and things to support their defenses:

1. Bills of Lading; provided to defendants' counsel on December 4, 2008.
2. Fixture Letter dated 15 January 2007; provided to defendants' counsel on January 22, 2009.
3. Crones & Co., Ltd. invoice and report dated 14 November 2007; provided to defendants' counsel on December 4, 2008.
4. Customer invoices for fruit dumped in Japan or sold at a loss in China or Japan; documents located in Tokyo, Japan.

5. Invoices for stevedoring and dumping costs; documents located in Tokyo, Japan.
6. Documents of the shipper showing good order and condition of the subject cargo at delivery to carrier in Ecuador.

### **III.**

A computation of each category of damages claimed by plaintiffs is annexed hereto as Appendix A.

Dated: New York, New York  
February 27, 2009

**WAESCHE, SHEINBAUM & O'REGAN, P.C.**  
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Kelso Enterprises Limited and Pacific Fruit Limited

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**TO:** James L. Ross, Esq.  
Freehill, Hogan & Maher LLP  
Attorneys for Defendants  
A.P. Moller-Maersk A/S,  
Maersk Line and Maersk del Ecuador C.A.  
80 Pine Street  
New York, New York 10005  
(212) 425-1900

**APPENDIX A****I. LOSS FOR DAMAGED FRUIT DUMPED IN JAPAN**

## A. Total of 1,996 boxes dumped

1. Morado		
403 boxes @ \$13.68 / box (SMV)		\$5,511.00
2. Orito		
1,493 boxes @ \$11.54 / box (SMV)		17,227.00
3. Enano CP		
100 boxes @ \$11.54 / box (SMV)		<u>1,154.00</u>
		\$23,892.00

## B. Additional Costs

1. Dumping	\$4,222.00
2. Survey	936.00
3. Extra Handling	<u>3,369.00</u>
	<u>8,527.00</u>

Total A + B	\$32,419.00
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**II. LOSS FOR DAMAGED FRUIT SOLD IN JAPAN**

Total of 8,321 boxes sold at reduced price

1. Bonita		
5,324 boxes @ loss of \$1.71 / box		\$9,104.00
2. Sanito		
1,097 boxes @ loss of \$0.43 / box		472.00
3. Enano CP		
1,900 boxes @ loss of \$0.43 / box		<u>817.00</u>
		\$10,393.00

**III. LOSS FOR DAMAGED FRUIT SOLD IN CHINA**

Total of 44,905 boxes sold at a loss in China

1. Bonita (SMV 12.82 in Japan) 43,326 boxes @ loss of \$8.57 / box	\$371,304.00
2. Sanito (SMV 12.82 in Japan) 1,579 boxes @ loss of \$8.57 / box	<u>13,532.00</u>
	 <u>\$384,859.00</u>

<b>LOSS (I, II &amp; III)*</b>	<b><u>\$427,671.00</u></b>
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\* Subject to Revision. Plus interest, costs, and attorney's fees.

All calculations based on exchange rate of 1 U.S. Dollar to 117 Japanese Yen.